IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal Nos.399 to 421 of 2001 and
W.P.Nos.4793 of 2000, 4245 of 2003, 19787 of 2003;
5987, 8881, 8897, 8903, 9234, 9256, 9288, 9289, 9698,
10446, 11368, 14035, 18408 and 29641 of 2004
and
7013, 24788 and 24793 of 2005

W.A.No.399 of 2001:
1. E.Paranthaman
2. K.Murugan
3. S.Delhi Babu
4. R.Sivakumar
5. M.Kumarasamy
6. K.Aavali
7. G.Panneerselvam
8. M.Nandagopal
9. S.Venugopal
10.V.Boomalingam
11.E.Sethuraman
12.E.Munusamy
13.G.Noyal ... Appellants

Vs.

1.The Chairman & Managing Director,
Air India Ltd.,
'Hansalaya Building' V Floor,
No.15,Baracamba Road,
New Delhi-110001.

2.Regional Manager,
Air India Ltd.,
Marshalls Road,
Egmore, Madras-600008.

3.Air India Ltd (Deputy Manager Airport),
Anna International Airport,
Meenambakkam,
Madras-600027.

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4.District Employment Officer,
Employment Exchange,
Kancheepuram.

5.Air India Employees Guild,
rep.by its Regional Secretary,
Air India Units Complex,
Pallavaram,
Chennai-43.
(5th respondent impleaded as per
order of Court dated 25.2.2002
made in WAMP.No.21998/2001) ... Respondents

Appellant in W.A.400/01

1. K.Manoharan
2. V. Raghu
3. D. Dicksonraj ... Appellant in W.A.400/01

Vs

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennau-8

3. Air India Ltd.,
Anna International Airport
Meenambakkam
Chennai-27

4. Air India Air Transport Services Limited
Anna International Airport
Chennai-43.

(R4 impleaed as party Respondent vide order dated 17.7.06 made in
W.A.M.P.No.2967 to 2974/06) W.A.400/01

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W.A.401/01

R. Munusamy ... Appellant/ Petitioner in W.A.401/01

Vs

1. The Management of Air India Limited
Marshalls road,
Egmore, Chennai-8.

2. Air India Employees Guild rep
by its Regional Secretary
Air India units complex
Pallavaram, Chennai-43.
(R2 impleaded as per order dated 25.2.2007 W.A.M.P.No.21999/01
... Respondent / Respondent W.A.401/01

W.A.402/01

1.S. Kannan
2.J. Vasudevan
3.A. Panneer
4.R. Kannan ... Appellant / Petitioner in W.A.402/01

VS

1. The Management of Air India Ltd,
Rep by its Chairman & Managing Director
Hansalaya Building, V Floor
No.15 Baracamba Road, New Delhi- 110 001.

2. The Regional Manager
Air India Limited
Marshalls Road,
Egmore, Chennai-8

3. The Deputy Manager (Air Port)
Air India Limited
Anna International Air port
Meenambakkam
Chennai- 600 027.

4. Air India Air Transport Services Limited
AUC Building, Pallavaram
Chennai- 600 043 ... Respondents/ Respondents in W.A. 402/01

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W.A.403/01

1.D. Veeraragavan
2.S. Paulraj
3.K. Ezhilmaram
4.G. Deenadhayalam
5.M. Arulkumar
6.C.B.V. Gopinath
7.N. Sathish
8.P. Vinayagamurthy
9.V. Purushothaman
10.P. Mothish
11.P. Jayakumar
12.E. Chandrakumar
13.V.P. Maduraiveeran
14.G.K. Balakrishna
15.M. Sivakumar
16.L. Yesurathinam
17.K. Ravi
18.D. George
19.D. Ramesh
20.S. Loganathan
21.S. Archanai Murugan
22.G.K. Dhananjayan
23.M. Rameshkumar
24.K. Thurab Ali
25.N.T. Kondaiyan
26.P. Vijayakumar ... Appellants/ Petitioner in W.A.403/01

Vs

1. The Management of Air India Ltd.,
Rep by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road
New Delhi. 110 001.

2. The Regional Manager
Air India Limited
Marshalls Road,
Egmore, Chennai- 600 008.

3. The Deputy Manager (Airport)
Air India Limited
Anna International Airport
Meenambakkam
Chennai 600 027.

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4. Air India Employees Guild
Rep by its Regional Secretary
Air India Unit Complex
Pallavaram, Chennai-600 043.

5. Air India Air Transport Services Limited
AUC Building, Pallavaram,
Chennai- 600 043 ... Respondents/ Respondents in W.A. 403/01

W.A.404/01

1.T. Suresh
2.H. Sureshkumar
3.C.P. Srinivasalu
4.Y.C. Dhanapal
5.P.V. Ravanaiah
6.M. Palanivel
7.K. Narasimman
8.S. John Victor
9.M.Vigneswaran
10.N.V. Prasad Rao
11.K. Dhanasekaran
12.Parasu Padmaiah
13.P. Umapathy
14.G. Kumaraguru
15.V. Ramesh
16.V. Sivabalan
17.A. Jayakumar
18.D. Jagadeesan
19.K.V. Jayachandran
20.M. Munusamy
21.M. Balaji ... Appellants / Petitioners

Vs

1. The Management of Air India Ltd
represented by ts Chairman & Managing Director
Hansalaya Building, V floor
No.15 Baracamba Road
New Delhi.

2. Regional Manager
Air India Ltd,
Marshalls Road
Egmore, Madras- 600 008.

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3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam, Madras- 600 027

4. Air India Employees Guild
rep by its Regional Secretary
Air India units complex,
Pallavaram,
Chennai-43

R4 impleaded vide
order dated 25.2.2002 made in
W.A.M.P.No.22001/2001 ... Respondents/ Respondents in W.A.404/01

W.A.405/01

1.J. Mahendran
2.K. Krishna Rao
3.R. Raghu
4.S. Raman
5.S. Palani
6.D. Jayakumar
7.V.C. Murugesan
8.T.P. Sasi
9.M. Solomon
10.N. Radhakrishnan
11.B. Muralikrishnan
12.B. Harikrishnan
13.K.A. Stalin
14.T.V. Sathyanarayanamurthy
15.E. John Vivekam
16.N. Ganesh
17.T.P. Surendran
18.J. Babu
19.K. Nesamani
20.V. Krishnan
21.V. Albert Jesudoss
22.N.T. Nithyanandam
23.R. James Anthony Charles
24.T. Perumal ... Appellants/ Petitioners 405/01

Vs

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1. The Management of Air India Ltd.,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road,
New Delhi- 110 001.

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 600 008.

3. Deputy Manager (Airport)
Air India Ltd,Anna International Airport
Meenambakkam, Madras- 600 027.

4. Air India Employees Guild
rep by its Regional Secretary
Air India units Complex
Pallavaram, Chennai-43.

5. Air India Air Transport services Ltd,
Anna International Airport
Chennai Airport
Chennai- 600 027.

R4 impleaded as per order dated 25.2.2002 made in WAMP.No.22022/01

R5 impleaded as per order dated 17.7.06 made in WAMP.Nos.2967 to 2974/04

... Respondents Respondents 405/01

W.A.406/01

1. M. Muthu
2. E. Raghunathan ... Appellants/ Petitioners in W.A.406/01

VS

1. The management of Air India Ltd.,
represented by its Chairman & Managing Director
Hansalaya Building V Floor,
No.15Baracamba Road
New Delhi- 110 001

2. Regional Manager
Air India Ltd,
Marshalls Road
Egmore, Madras-8.

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3. Deputy Manager (Airport)
Air India Ltd.,
Anna Internatioanl Airport
Meenambakkam, Madras- 600 027.

4. District Employment officer
Employment Exchange
Kancheepuram. ... Respondents/
Respondents in W.A.406/01

G. Tamilarasan ... Appellant / Petitioner in W.A.407/01
A. Kamalakannan ... Appellant / Petitioner in W.A.408/01

VS

1. The management of Air India Ltd.,
represented by its Chairman & Managing Director
Hansalaya Building, V Floor
No.15 Baracamba Road, New Delhi- 110 001

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 600 008.

3. Deputy Manager (Airport)
Air India Ltd.,
Anna International Airport
Meenambakkam, Madras- 600 027.

4. District Employment officer
Employment Exchange
Kancheepuram. Respondents/ Appellant in
407/01 and 408/01

1.S. Sounderrajan
2.D. Ravi
3.L. Venkatachalam
4.M.J. Vinod
5.C. Ravindran
6.D. Prakash
7.G. Mahendran
8.G. Jayaseelan
9.K. Kumaran
10.K. Dinakaran
11.N. Raghu
12.D. Sagayam
13.K. Ranjanamohan

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14.A. Aalex
15.K. Ariaveeran
16.V. Vijayakumar
17.S. Kamalraj Kamesh
18.C. Moses
19.V. Sundar
20.L. Murugan
21.R. Aruldas
22.V. Pushparaj
23.D. Vijayakumar
24.R. Benjamin
25.J. Pandiyan
26.V. Loganathan
27.C. Venkatesan
28.R. Deivamuthu
29.L. Nagappan
30.M.C. Suresh
31.R. Pious Stanislaous
32.B. Arun
33.A. Sukumar ... Appellants/ Petitioners in W.A.409/07

Vs

1. The management of Air India Ltd,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Barahkhamba Road
New Delhi- 110 001

2. Regional Manager
Air India Ltd,
Marshalls Road
Egmore, Madras- 600 008.

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam, Madras- 600 027 ... Respondents/ Respondents 409/01

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W.A.410/01

1.K. Sekar
2.C. James Paul
3.R. Lakshmikanthan
4.D. Felix
5.K. Deivamani
6.E. Ravichandrasekhar
7.D. Rajasekaran

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8.B. Arunachalam
9.M. Nagalingam
10.N. Janakiraman
11.S. Venkatesan
12.R. Ravanan ...Appellants/ Respondents

Vs

1. The Management of Air India Limited
Marshalls Road,
Egmore, Chennai-8

2. Air India Employees Guild,
rep.by its Regional Secretary,
Air India Units Complex,
Pallavaram,
Chennai-43.
(2nd respondent impleaded as per
order dated 25.2.2002
made in WAMP.No.22003/2001) ... Respondents inW.A.410/01

W.A.411/01

K. Baskaran ... Appellant/ Petitioner in W.A.411/01

Vs

The Air Management of Air India Ltd,
Marshalls Road,
Egmore, Chennai-8 .... Respondent in W.A.411/01

W.A.412/01

1.S.L. Jayaprakash
2.M. Murugesan
3.K. Isaiah
4.B.R. Prabhukumar
5.R. Venkatesan
6.P. Ravichandran
7.M. Kannan
8.S. Baskaran
9.D. Venkataiah
10.S. Gopalakrishnan
11.N. Narasimhalu
12.P.R. Sampathkumar ... Appellant/ Petitioner in W.A.412/01

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1. The Management of Air India Ltd,
Rep by its Chairman & Managing Director
Hansalaya Building ,
V Floor,
No.15 Baracamba Road,
New Delhi- 110 001.

2. The Regional Manager
Air India Limited
Marshalls Road,
Egmore, Chennai-8.

3. TheDeputy Manager (Airport)
Air India Limited
Anna International airport
Meenambakkam
Chennai-27.

4. Air India Employees Guild
rep by is Regional Secretary
Air India Unit Complex
Pallavaram, Chenna-43.

5. Air India Air Transport Services Limited
Air India Unit Complex, Pallavaram,
Chennai-43 .... Respondents/
Respondents in W.A. 412/01

W.a.No.413/2001

1. D. Muralidharan
2. K. Panneerselvam
3. A. Yuvakumar
4. A. Mohamed Rafi ... Appellants/ Petitioner
in W.A.413/01

VS

1. The Management of Air India Ltd,
Rep by its Chairman & Manging Director
Habsalaya Building, V Floor
No.15, Baracamba Road
New Delhi- 110 001.

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8.

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3. The Deputy Manager (Airport)
Air India Limited
Anna International Airport
Meenambakkam, Chennai-27.

4. Air India Employees Guild
Rep by its regional Secretary
Air India Unit Complex
Pallavaram, Chennai-43.

5. air India, Air Transport Services Ltd.,
Air India Unit Complex,
Pallavaram, Chennai-43. .... Respondents/
Respondents in W.A. 413/01

W.A.414/01

1. M. Raveendran
2. P. Penchaliah
3. N. Ramanaiah ...Appellants/ Petitioners

Vs

1. The Management of Air India Ltd,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road,
New Delhi-110 001

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam, Madras- 27

4. Air India Employees Guild
rep by its Regional Secretary
Air India units Complex
Pallavaram, Chennai-43

(4th respondent impleaded by order
dated 25.2.2002
in W.A.M.P.No.22006/01. ... Respondents/ Respondents in
W.A.414/01

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W.A.415/01

K. Munavarkhan ... Appellant/ Petitioner

VS

1. The Management of Air India Ltd,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road,
New Delhi-110 001

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ...Respondents/ Respondents
W.A.415/01

1.A. Murugan
2.S. Arjunan
3.S. Partheepan
4.V. Ravi
5.G. Kumaresan
6.G. Saravanakumar
7.S. Gandhiban
8.Murugan Petitioners/ Appellants in W.A.416/01

Vs

1.The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building' V Floor,
No.15,Baracamba Road,
New Delhi-110001.

2.Regional Manager,
Air India Ltd.,
Marshalls Road,
Egmore, Madras-600008.

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3.Deputy Manager (Airport),
Air India Ltd,
Anna International Airport,
Meenambakkam,
Madras-600027.

4.District Employment Officer,
Employment Exchange,
Kancheepuram.

5.Air India Employees Guild,
rep.by its Regional Secretary,
Air India Units Complex,
Pallavaram,
Chennai-43.
(5th respondent impleaded as per
order dated 25.2.2002
made in WAMP.No.22007/2001) ... Respondents/
Respondents W.A.416/01

W.A.No.417/01

C.R. Lakshmipathy ... Appellant/ Petitioner in
W.A.417/01

VS

1. The Management of Air India Ltd,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road,
New Delhi-110 001

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents
W.A.417/01

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W.A.418/01

1.R. Sathyamoorthy
2.M. Selvam
3.I. Sarangan
4.P. Jayakumar
5.R. Radhakrishnan
6.K. Samuel
7.V. Ramesh
8.P. Mothish ... appellants/ Petitioners in W.A. 418/01

Vs

1. The Management of Air India Ltd,
represented by its Chairman & Managing Director
Hansalaya Building V Floor
No.15 Baracamba Road,
New Delhi-110 001

2. Regional Manager
Air India Ltd,
Marshalls Road,
Egmore, Madras- 8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents in W.A.418/01

W.A.419/01

V. Chandrasekaran ... appellant/ Petitioner

VS

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8

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3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27

4.District Employment Officer,
Employment Exchange,
Kancheepuram.

5.Air India Employees Guild,
rep.by its Regional Secretary,
Air India Units Complex,
Pallavaram,
Chennai-43.
(5th respondent impleaded as per
order dated 25.2.2002
made in WAMP.No.22008/2001)

6. Air India Air Transport
Services Limited
Anna International Airport
Chennai Airport
Chenani-27.
R6 impleaded as party respondent vide order
of Court dated 17.7.06 made in
WAMP.Nos.2967 to 2974/04 ... Respondents/ Respondents W.A.419/01

W.A. 420/01

1. P. Kannaiah
2. R. Balakrishnan ... Appellant/ Petitioner in W.A. 420/01

Vs

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8

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3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27

4. Air India Express Limited
Marshalls Road
Egmore, Chennai-8

5. Air India Air Transport Services Limited
Anna International Airport
Chennai-43. ... Respondents/ Respondents in W.A. 420/01

W.A. 421/01

1. A. Jayaseelan
2. B. N. Swaminathan ... Appellants/ Petitioners in W.A.421/01

Vs

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2.Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents in W.A. 421/01

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W.P.4793/2000

1.E. Dhanaraj
2.E. Lawrence
3.G.Padmanabhan
4.S. Velu
5.Y. Sundar Sing
6.G. Vijayaragavan

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7.S.R . Venkatachalapathy
8.N. Ramesh ... Petitioners in W.P.4793/00

VS

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents
W.P.4793/00

V. Gnanasekaran ... Petitioner 4245/03

Vs

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. The Regional Manager
Air India Limited
Marshalls Road
Egmore, Madras-8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27

4. District Employment officer
Employment Exchange, Kancheepuram. ... Respondents/ Respondents
4245/03

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W.P.19787/03

K. Saravanan ... Petitioner inW.P.19787/03

Vs

The Management of Air India Ltd,
Marshal Road, Egmore
Chennai- 600 008. ... Appellant in WP/ 19787/03

W.P. 5987/04

T. Loganathan ... Petitioner in W.P.5987/04

Vs

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. Regional Manager
Air India Limited
Marshalls Road
Egmore, Chennai-8

3. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents W.P.5987/04

W.P.8881/04

P. Ramesh ... Petitioner in W.P. 8881/04

VS

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam, Madras- 27 ... Respondents/ Respondents W.P.8881/04

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W.P. 8897/04

S. Ravi ... Petitioner in W.P. 8897/04

VS

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents/ Respondents W.P.8897/04

M. Elumalai ...Petitioner in W.P.8903/04
A.P. Srinivasan ...Petitioner in W.P.9234/04
W. Issac Newton ...Petitioner in W.P.9256/04
K. Durairaj ...Petitioner in W.P.9288/04
M. Krishnamoorthy ...Petitioner in W.P.9289/04
B. Sreenivasalu ...Petitioner in W.P.9698/04
D. Ramesh ...Petitioner in W.P.10446/04
N. Samuel Nelson Dhanraj ...Petitioner in W.P.11368/04
S. Suresh ...Petitioner in W.P.14035/04
M. Kanniappan ...Petitioner in W.P.18408/04

VS

1. The Management of Air India Ltd,
rep by its Chairman & managing Director,
Hansalaya Building V Floor,
New No.15, Baracemba Road
New Delhi- 110 001

2. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ...Respondents in W.P. 8903, 9234, 9256, 9288, 9289, 9698, 10446, 11368, 14035, 18408/04

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W.P.29641/04

S. Masilamani ... Petitioner inW.P. 29641/04

Vs

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. Air India Ltd rep by
HRD Manager, New Building
Meenambakkam
Chennai-27

3. Air India Limited rep by its
Deputy General Manager HRD
Air India unity Complex
GST Road
Pallavaram Contonment, Chennai-43 ... Respondents inW.P.29641/04

W.P.7013, 24788, 24793/05

J. Irudayaraj ... Petitioner in W.P.7013/05
A. Selvakumar ... Petitioner inW.P.24788/05
R. Thomas .... Petitioner in W.P.24793/05

Vs

1. The Management of Air India Ltd,
rep by its Chairman & Managing Director,
Hansalaya Building V Floor,
No.15, Baracemba Road
New Delhi- 110 001

2. Deputy Manager (Airport)
Air India Ltd,
Anna International Airport
Meenambakkam
Madras- 27 ... Respondents in W.P.7013, 24788, 24793/05

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Writ Appeals preferred under Clause 15 of the Letters Patent as against the common order of the learned single Judge dated 31.8.2000 made in W.P.Nos. 15916/99,4271/00, 4624/00, 175/00, 1752/00 2102/00, 17387/99, 16405/99, 3102/00, 3786/00, 2711/00, 173/00, 17267/99, 174/00, 5697/00, 5924/00, 17318/99, 3591/00, 101/00, 5934/,7977/00 and 19769/99

2. Writ Petitions are filed under Article 226 of the Constitution of India for the writ of Mandamus, in W.P. 15916, 4271/00, 17387/99, 3102/00, 3786/00, 17318/99, 5934/00, 7977/00, 16405/99.

3. directing the respondents 1 to 3 not to indulge in the practice of employing persons such as the petitioners only for 90 days and outing them thereafter and in particular direct the respondents 1 to 3 to frame a scheme for regular absorption of the workmen like the petitioners and consequently direct the 4th respondent to maintain the seniority of the petitioners in the Employment exchange so as to preserve their seniority in the event of such of the petitioners who do not get regularisation on the framing of the scheme.
(W.P. Sec. 3A 4624/00, and 173/00, 15916, 427/00, 17387/99, 3102/00, 3786/00, 17318/99, 5934/00, 16405/99)

4. Writ of Mandamus directing the respondents management to reinstated the petitioner with order benefits in accordance with the award passed by the Industrial Tribunal in I.D. Nos.22 and 30 of 1991 dated 15.5.97 (in W.P.4264, 173/00)

5. Writ of Mandamus directing the respondents to frame a scheme for the regularisation of the daily record employees of Air India Ltd, W.P. 175/00

6. W.P.1752/00 directing the respondents to frame a scheme of the regularisation of the daily rated employees engaged in the flight handling unit and catering Department of Air India at the International airport at Madras prior to this date and pending framing of the scheme utilise the paths labour engaged in the past including the Petitioners herein. (1752/00, 2711/00, 174/00, 5697/00 and W.A.19769/99)

7. directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the catering Department Engineering Department and Ground support Department of Air India Ltd at the International Air Port at Madras prior to this date and pending framing of the scheme utilise the labour engaged in the past including the Petitioners

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herein.(W.P.17267/99 W.P.3591/00, in W.P. 417/01, (W.P.101/00, W.A.418/01, 2102/00)

8. directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the Flight Handling unit, catering department ground support division and service Department of Air India Ltd at the International Airport at Madras prior to this date and pending framing of the scheme and utilise the labour engaged int he past including the petitioners herein. (2102/00, 3591/00, 101/00) W.P.5934/01, W.A. 419/01

W.P.No.4793/00 W.P. filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to frame a scheme for the regularisation of the daily rated rated employees engaged in the Flight Handling unit, catering department grand support Division and Service Department of Air India ltd at the International Airport at Madras prior to this date 15.2.2001 dated nil in 2102/00 and pending framing of the scheme and utilise the labour engaged int he past including the petitioners herein an issue orders.
W.P. 4245/03:- Writ of Mandamus directing the respondents 1 to 3 not to indulge in the practice of employing persons such as the petitioner only 90 days and ousting them thereafter and in particular direct the respondents 1 to 3 to frame a scheme for regular absorption of the workmen like the petitioner consequently direct the 4th respondent to maintain the seniority of the petitioner in the Employment Exchange so as to preserve their seniority in the event of such of the petitioner who do not get regulrisation on the framing of the scheme.

W.P.19787/03:-Writ of Mandamus directing the respondent management to reinstate the petitioner in service with other benefits in accordance with the common Award passed by the Industrial Tribunal, chennai in I.D.No. 22 and 39 of 1991 dated 15.5.97.

W.P.5987/04, 5984, W.A.415/01:- Writ of mandamus directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the Flight Handling unit of Air India Ltd, at the International Air Port at Chennai prior to this date and pending framing of the scheme utilise the labour engaged in the past including the petitioner herein.

W.P. 8881/04:- Writ of Mandamus directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the Flight Handling unit of Air India Ltd, at the International Air Port at Chennai prior to this date and pending framing of the scheme utilise the labour engaged in the past. including the petitioner herein.

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W.P.8897, 8903, 9234, 9256, 8288, 9289, 9698, 10446, 11368, 14035, 18408/04:-

Writ of Mandamus directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the Flight Handling unit of Air India Ltd, at the International Air Port at Chennai prior to this date and pending framing of the scheme utilise the labour engaged in the past. including the petitioenr herein.

W.P.29641/04:-Writ of Certiorarified Mandamus calling for the recosrds comprised in Ref.MAA/Per09A/220 dated 31.8.04 on the file of Deputy General Manager , HRD Air India Ltd,/ 3rd Respondent and quash the same and consequently direct the 3rd respondent to consider the representation dated 21.1.2004 in light of the order of this court made in W.P.19305/04 dated 9.7.04.

W.P. 7013/05, 24788/05, 24793/05:- Writ of mandamus directing the respondents to frame a scheme for the regularisation of the daily rated employees engaged in the Flight Handling unit of Air India Ltd, at the International Air Port at Chennai prior to this date and pending framing of the scheme utilise the labour engaged in the past. including the petitioner herein.

For appellants in W.As .399, 400, 402 to 409 & 412 to 421/2001 and for petitioner in WP.4793/2000 : Mr.V.Prakash, S.C. for Mr.T.Ramkumar

For appellants in W.As.401, 410 & 411/2001 : Mr.P.V.Ramachandran

For petitioners in W.Ps.19787/2003, 5987, 8881, 8897, 8903, 9234, 9256, 9288, 9289, 10446, 11368, 18408, 9698, 14035/2004 & for petitioners in W.Ps.7013 24788 & 24793/2005 : Mr.S.Gunaseelan

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For petitioners in
W.P.4245/2003 : Mrs.R.Srividya
For Petitioner in
W.P. 29641/04 : R. Karthikeyan

For R.1 to R.3 in
W.As.399 to 421/01 : Mr.R.Thiagarajan, S.C.for
and for Air India M/s.Aiyar & Dolia and for
in all the W.Ps. : M/s.S.Ramasubramanian &
Associates in WP.4793/2000

For R.5 (Union) : Mr.V.Kalyanaraman W.A.399/01
in W.A.399, 403, 416, 419
R4 inW.A.403, 404, 405, 412, 413, 414,
R2 in W.A. 401 & 411

COMMON JUDGMENT

ELIPE DHARMARAO , J.

All these matters are inextricably interconnected with each other and hence all these matters are heard together and disposed of by this common judgment.

2. For the sake of convenience and easy reference, the appellants in the writ appeals and the petitioners in the writ petitions are hereinafter be referred to as 'petitioners' and the Management of Air India and other officials of Air India are commonly referred to as the 'respondent-Management'.

3. The case of the petitioners is that the respondent Management operates international flights and several flights of Air India originate or transit through Madras Airport and a number of workers are employed by Air India in the catering department for the purpose of cleaning the seats in the aircrafts, arranging the blankets and removing the wastages inside the aircraft etc. and for this purpose, Air India was engaging workmen on daily rated basis for a period of 90 days and terminating them from service thereafter; that in the vacancies so caused, once again Air India calls for applications from the Employment Exchange and again engages them for 90 days and thus repeats the same process. The petitioners would submit that the work requirement for Air India is one of permanent and perennial nature and Air India engages workmen for short durations to deny them the benefit of permanency and other consequential benefits.

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4. The further case of the petitioners is that a number of workmen who were similarly engaged in the year 1985 raised an Industrial Dispute against their non-employment and the Industrial Tribunal upheld the contentions of the workmen and directed that a Scheme be framed for permanent absorption of these workers and as against the said Award of the Labour Court, the Management filed a writ petition and entered into a settlement with the Union that raised the said dispute that it will absorb the workmen covered by the Settlement and thereafter did not forward any Scheme for permanent absorption of the workmen and these petitioners are not members of the said Union and that Settlement itself was only to cover the workmen who had the benefit of the Award.

5. The petitioners would further submit that they were registered with the Employment Exchanges and they were called for a selection process which was held in Kancheepuram and the petitioners were made to undergo physical endurance tests and only after that they were selected and in fact, one of the candidates by name C.Mohan, who participated in the physical endurance test died during the selection process; that after the petitioners were selected, they were given orders of appointment wherein they have specifically said that the employment would not continue beyond 90 days; that when the petitioners were ousted from service, once again they have to reapply and register themselves with the Employment Exchange and lose their seniority in the Exchange for this employment of 90 days; that it is not as if the work done by the petitioners has ceased; that what the Management of Air India does is after ousting the petitioners from work, they once again goes to the Employment Exchange and selects a new batch of candidates and use their service for 90 days and again oust them. With such averments, some of the petitioners sought for a Writ of Mandamus directing the respondent Management not to indulge in the practice of employing persons such as the petitioners only for 90 days and ousting them thereafter and also direct the respondent Management to frame a Scheme for regular absorption of the workmen like the petitioners and consequently direct the Employment Exchange Officer to maintain the seniority of the petitioners in the Employment Exchange so as to preserve their seniority.

6. Earlier, some of the petitioners have raised Industrial Disputes in I.D.Nos.22 of 1991 and 39 of 1991 before the Industrial Tribunal, Chennai and the Tribunal, after conducting a thorough enquiry, has ordered regularisation of the services of the workmen in I.D.No.22 of 1991 and 82 workmen in I.D.No.39 of 1991 from the date of the said Award with continuity of service and backwages and other benefits. Since the respondent Management has not implemented the Award of the Tribunal, one of the beneficiary of the said Award has filed W.P.No.19787 of 2003 praying to issue a Writ of Mandamus, directing the respondent

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Management to reinstate him in service with other benefits in accordance with the said Award dated 15.5.1997.

7. In W.P.No.29641 of 2004, the petitioner prays to issue a Writ of Certiorarified Mandamus calling for the records comprised in Ref:MAA/PER 09A/220, dated 31.8.2004, on the file of the Deputy General Manager-HRD, Air India Ltd. and quash the same and consequently direct the third respondent to consider the representation dated 21.1.2004 in the light of the order of this Court made in W.P.No.19305 of 2004, dated 9.7.2004.

8. A common counter affidavit has been filed by the respondent Management contending that they engage casual employees, through Employment Exchange, Kancheepuram, on a day-to-day basis depending upon the flight handling requirements for loading and unloading of passenger baggage etc. since the Chennai Airport comes under the jurisdiction of Kancheepuram District; that the company has its own permanent employees to carry out the flight handling requirements; that the casual employees are engaged to substitute the permanent loaders/cleaners/helpers who remain absent from work and the work in question is casual in nature and not perennial in the sense that it could not be determined in advance as to the number of persons who would be required on a regular basis because of the very nature of the work itself, which involved arrival and departure of flights at Madras International Airport, which was not something happening continuously throughout the day; that the permanent employees of the Company are represented by a recognised Union called Air India Employees' Guild, which has been in existence from the year 1985 and this Union has signed so many settlements with the Management under the provisions of the Industrial Disputes Act and on several occasions cooperated with the Management in order to make the working of the company viable; that in order to operate economically and to provide satisfactory services, it was decided with effect from 13.10.1999 that aircraft dressing (which involved cleaning of the aircraft and allied activities) would be entrusted to a contractor and accordingly, after negotiations, aircraft dressing work for a period of three years was entrusted to M/s.Saj Caterers, who have taken charge from 13.10.1999 and the company's permanent employees doing aircraft cleaning were redeployed to do loading/unloading work; that the company is facing cumulative loses over the years and therefore, it is considering various schemes to reduce the manpower.

9. The petitioners have filed a re-joinder stating that the permanent work force of Air India is totally insufficient to meet the work load and Air India consistently requires more than 200 workmen every day for this purpose apart from the permanent work force; that for this engagement, a healthy labour practice would

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have been to work out the exact work strength with marginal fluctuations and appoint persons on regular basis.

10. The petitioners would furnish the details of number of flights that arrive every day and depart from the Madras International Airport for which the baggage handling, cargo handling, cabin cleaning are done by employees apart from cargo flights and submit that for a single air craft, turn around time may be notionally 30 minutes, but taking into account the number of air crafts landing each day and the number of workers required, the statement made by Air India as if it does not require workers on regular basis is incorrect; that in fact, the workers presently engaged do more over time than duty hours; that in W.P.Nos.15915 and 15916 of 1999, on 27.9.1999, this Court has ordered that no new person should be recruited in the place of the petitioners; that in order to avoid giving work to the petitioners under the orders of this Court, Air India deployed the men working in the catering and cabin cleaning areas for flight handling, baggage handling etc. and inducted a contract labour system through Shaj Caterers; that the interim order of this Court was first granted on 27.9.1999 in W.P.Nos.15915 and 15916 of 1999 and the workers of cabin cleaning was entrusted to Shaj Caterers on 13.10.1999, which itself would show that entrusting of the work to Shaj Caterers is not for any business reason but really to evade the orders of this Court; that the petitioners did not have any communication from the Union with regard to any proceedings or talks with the Management or that the Union proposes to give up the benefits accorded to the petitioners by the Award in the aforesaid disputes; that the signatory to the settlement did not have the authority to represent the Union at the relevant point of time since the term of office of the office bearers has expired and a settlement signed by such a person does not have authority to represent the Union and the same is not binding on the Union; that the respondent and the Union have colluded in singling out certain workmen to give them the benefit of permanent jobs while persons like the petitioners falling in the same class have been ignored.

11. Since a learned single Judge of this Court has dismissed the claim of some of the petitioners, they have preferred writ appeals and since during the course of hearing of these writ appeals, it has been brought to our notice that connected writ petitions are also pending, we ordered to post all these matters together and as has already been adverted to supra, common arguments are advanced.

12. During arguments, the learned senior counsel appearing for the petitioners would brand the act of the respondent-Management as unfair labour practice, which is stoutly denied by the learned senior counsel for the respondent Management, reading

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out the impugned common order of the learned single Judge, in support of his case.

13. Admittedly, all the petitioners are X standard qualified and their services were engaged by the respondent Management as unskilled labour, through Employment Exchange, after a selection process. The petitioners have asserted on oath, in their affidavits, that one of the candidates by name C.Mohan, who participated in the physical endurance test died during the selection process, which shows the typical and complex nature of the selection test. It is also brought to the notice of this Court that on being selected to these posts, the petitioners lose their seniority in the Employment Exchange since their names would be removed from the roles of the Employment Exchange and they have to register their names once again with the Employment Exchange.

14. While on the part of the petitioners it is contended that the work is permanent and perennial in nature, on the part of the respondent-Management it has been contended that the casual employees are engaged to substitute the permanent loaders/cleaners/helpers who remain absent from work and it is purely dependent upon the casual reporting for work and they are considered for engagement only if there is a requirement and arrival and departure of flights fluctuate and do not take place throughout the day. Therefore, even from the averments of the counter affidavit of the respondent-Management it is clear that to get work, one has to wait endlessly, even for the whole day, during which time he cannot pursue any other job/work. The stand of the respondent-Management that to cut-short the expenditure, such a procedure of appointing workers only for 90 days has been adopted cannot be accepted, being against the interest of the workmen, whose services were utilised at the cost of their seniority in the Employment Exchanges and thereafter thrown like a curry leaf.

15. The petitioners have produced the details showing the number of flights each day arrive and depart from the Madras International Air Port for which the baggage handling, cargo handling, cabin cleaning are done. From the particulars furnished on either side, it is seen that many flights throng the International Airport of Chennai for which the baggage handling, cargo handling, cabin cleaning are to be done by the employees. If really this work is not permanent and perennial in nature and if the petitioners are appointed only towards the posts of permanent employees who went on leave, there is no necessity for the respondent-Management to engage workers, batch after batch through the Employment Exchange. A judicial note has to be taken to the fact that with many private operators operating their flights from and through Chennai, as has been rightly submitted on

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the part of the petitioners, the work may always be wanting workers to attend, which is permanent and perennial in nature.

16. It has been brought to our notice that some of the employees are appointed, with breaks, regularly. Having appointed such workers through Employment Exchange at the cost of their seniority in the Employment Exchange, their services are being given an artificial break by the respondent-Management so as to deny them the benefits of permanent employment.

17. It is more paining to note that after the interim order of this Court on 27.9.1999 in in W.P.Nos.15915 and 15916 of 1999, the work of cabin cleaning was entrusted to Shaj Caterers on 13.10.1999 by the respondent-Management, which appears to be to evade the orders of this Court. This Court is at a loss to understand such a hasty decision of the respondent-Management, at the cost of the interest of the petitioners and other such similarly placed employees, who were appointed through a selection process.

18. At this stage, the learned senior counsel for the respondent-Management would submit that the work being seasonal, no direction for regularisation could be given and in support of his arguments, he has relied on a judgment of the Apex Court in OIL AND NATURAL GAS CORPORATION LTD. vs. ENGINEERING MAZDOOR SANGH [2007-I-LLJ-704], wherein when casual/temporary workmen engaged for geological surveys have sought direction to regularize the services of the workmen with 240 days service, the Apex Court has observed:

> "Having regard to the nature and period of employment of the workers, it would create difficulties if they were to be treated on par with regular employees as directed by the single Judge and more so, if they were to be notionally treated as regularized from May 1999 as directed by the Division Bench."

But, in the case on hand, as has been held supra, it is not a seasonal work, but a permanent and perennial work and therefore, when the services of the petitioners were utilised with artificial breaks, even though there is sufficient work in the nature of permanent and perennial, in order to deny them the regularisation and other benefits, the same yardstick as has been observed by the Apex Court in the above cited judgment, cannot be applied to the case on hand and thus, the above judgment of the Apex Court is well distinguishable.

19. The learned senior counsel for the respondent-Management would also rely on a judgment of the Apex Court in REGIONAL MANAGER, SBI vs. MAHATMA MISHRA [JT 2006(10) SC 179], wherein it has been held:

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"Unfair labour practice is not to be readily inferred. Before a conclusion in that behalf is drawn, the conditions precedent therefor must be satisfied. The Labour Court failed to show as to how the appellant can be said to have taken recourse to unfair labour practice. It was not a case where the respondent was being appointed consistently for a number of years with artificial breaks. It was also not a case where the purport and object for such appointment was to violate the provisions of the Industrial Disputes Act."

20. It was a case where temporary workman for a fixed period was appointed and his services were terminated since his appointment was made in violation of the rules and regulations of the Bank. In such circumstances, the Apex Court has observed that the order of reinstatment passed in favour of the workman is bad. In the case on hand, no such illegal appointments are made. All the petitioners were appointed by notification, through Employment Exchange and after being selected in the Endurance Test, wherein even a person has died, as has been submitted by the petitioners in their affidavit, which remained unchallenged. Therefore, the above judgment of the Apex Court is also well distinguishable and the same cannot be applied to the facts of the present case.

21. The respondent-Management has submitted that the 5th respondent Union has entered into many settlements with the Management including the one regarding the implementation of the Award in I.D.Nos.22 and 39 of 1991, dated 15.5.1997 and they are binding on all the workmen. However, the petitioners have submitted that the said Settlement, dated 9.12.1999, is unfair, illegal and not done in accordance with the bye-laws of the Union and the Union cannot barter away the relief accorded to individual workman relating to the non-employment without their express consent and that the signatory to the Settlement did not have the authority to represent the Union at the relevant point of time and the term of office of the office bearers having since expired, a Settlement signed by such a person does not have authority to represent the Union.

22. In this context, the learned senior counsel for the respondent-Management would argue that since such disputed questions of fact are involved, the writ petitions themselves are not maintainable. In support of his arguments, the learned senior counsel for the respondent-Management would rely on the Full Bench decision of this Court in P.PITCHUMANI etc. vs. THE MANAGEMENT OF SRI CHAKRA TYRES LTD. [2004(3) CTC 1] and an unreported decision of the First Bench of this Court in Writ Appeal Nos.415 and 416 of 2006, dated 18.4.2006 (CHAIRMAN & MANAGING DIRECTOR, M/s.METAL BOX INDIA LTD. Etc., vs. METAL BOX COMPANY WORKERS UNION etc.)

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23. In both those matters, to establish the argument that the action of the Union is malafide in entering into a settlement with the Management, no material has been placed on record and therefore, the Court felt that such disputed questions of fact cannot be entertained in writ jurisdiction. But, here, there is more than sufficient material on hand to construe that the action of the 5th respondent Union in entering into the Settlement, dated 9.12.1999, with the respondent-Management is not in the interest of workmen particularly, as against the Award passed by the Tribunal in I.D.Nos.22 and 39 of 1991, dated 15.5.1997, which has become final, wherein the Tribunal has considered, in depth, all the facts and circumstances of the case, after an elaborate enquiry and has answered in favour of the workmen.

24. The respondent-Management, instead of implementing the Award of the Tribunal in I.D.Nos.22 and 39 of 1991, dated 15.5.1997, has paid a deaf ear to the same, compelling one of the beneficiaries of the said Award to knock the doors of this Court under Article 226 of the Constitution of India, by filing W.P.No.19787 of 2003. What prompted the 5th respondent Union to enter into such an ex facie illegal settlement, dated 9.12.1999, with the respondent-Management, at the cost of the welfare of the employees, is a Million Dollar question, which was not even attempted to be explained by the 5th respondent either in their counter or during the course of arguments. Further more, the counter-affidavit filed by the 5th respondent Union is completely silent about the allegations made against them and not even a formal denial of the allegations of the petitioners could be seen in the entire counter-affidavit of the 5th respondent Union, which throws considerable doubt about the genuineness and authenticity of the Union to enter into such a Settlement with the respondent-Management, that too betraying the trust reposed on them by its Members. The clever silence on the part of the 5th respondent speaks volumes in support of the case of the petitioners and against the respondent-Management. We are prompted to comment so, because of the one-sided wordings in the so-called 'interim settlement' dated 9.12.1999 entered into by the 5th respondent with the respondent-Management. Certain clauses of the said settlement are extracted hereunder to show, how the 5th respondent Union has given a go-bye to the interest of the workers in favouring the Management and giving a free-hand to the respondent-Management to deal with such a sensitive issue, involving the livelihood of workers:

> "25.Provided that in no case shall any individual from this Annexure be engaged for more than 90 days continuously as a Casual Labour. Upon the expiry of 90 days of actual engagement as Casual Labour, whether continuously or otherwise, the right of that person to

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get engagement as a Casual Labour shall cease and the Management shall thereafter pass on to the next person or persons in the list in Annexure in accordance with the serial numbers subject again to the criteria indicated herein. In the event of any person in the said list whose turn it is to be engaged for casual work, depending upon the need of such engagement by the Management, if he does not turn up or take up the deployment as per his turn, the Management shall proceed to engage the next person in the Annexure for the purpose of casual engagement in accordance with this clause. The Management shall have the right to delete his name from the Annexure.

26. It is made clear that it is not incumbent upon the Management to engage all or any of the persons whose names are found in the Annexure hereto but such engagement shall be at the discretion of the Management depending upon the need or occasion for engagement of casual labour by the Management for the purpose of loading and unloading work at Chennai Airport....

29. This interim arrangement shall not bestow any right upon any of these individuals engaged as casual labour, arising out of this arrangement, any right to claim or demand permanent employment in any capacity with the Management"

25. As has been observed supra, this settlement gives sweeping powers to the Management and moreover, it appears that the Management is successful in getting such of their conditions included in the settlement, keeping at stake the welfare of the employees, through the 5th respondent Union, which has been entered into only to avoid implementing the Award of the Tribunal in I.D.Nos.22 and 39 of 1991, dated 15.5.1997. Such a practice of the respondent-Management has to be depricated and has to be dealt with seriously, so as to restrain them from repeating the same in future. Therefore, we are of the considered view that the workmen cannot be thrown from pillar to post to reap the benefits of their accrued rights and thus the judgments relied on by the learned senior counsel for the respondent-Management have no application to the facts of the case on hand.

26. The learned senior counsel for the respondent-Management has also cited the following judgments:

1.R.K.PANDA AND OTHERS vs. STEEL AUTHORITY OF INDIA AND OTHERS [(1994) 5 SCC 304;

2.GUJARAT ELECTRICITY BOARD, UKAI vs. HIND MAZDOOR SABHA [AIR 1995 SC 1893];

3.HIMANSHU KUMAR VIDYARTHI & OTHERS vs. STATE OF BIHAR AND OTHERS [1998-II-LLJ 15];

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4.STEEL AUTHORITY OF INDIA LTD. AND OTHERS vs. NATIONAL UNION WATER FRONT WORKERS AND OTHERS [2001-II-LLJ 1087];
5.HARI SHANKAR SARMA AND OTHERS vs. M/S.ARTIFICIAL LIMBS MANUFACTURING CORPORATION AND OTHERS [AIR 2002 SC 226];
6.MUNICIPAL CORPORATION OF GREATER MUMBAI vs. K.V.SHRAMIK SANGH AND OTHERS [2002-II-LLJ 544];
7.ROURKELA SHRAMIK SANGH vs. STEEL AUTHORITY OF INDIA LTD. & ANOTHER [JT 2003 (1) SC 465= 2003 (4) SUPREME 121];
8.SECRETARY, STATE OF KARNATAKA AND OTHERS vs. UMADEVI (3) AND OTHERS [(2006) 4 SCC 1];
9.SECRETARY, STATE OF KARNATAKA AND OTHERS vs. UMADEVI (2) AND OTHERS [(2006) 4 SCC 44] and
10.INDIAN DRUGS AND PHARMACEUTICALS LTD. vs. WORKMEN, INDIAN DRUGS & PHARMACEUTICALS LTD. [(2007) 1 SCC 408].

27. There is no dispute regarding the propositions laid down by the Apex Court in the above judgments. However, for the above discussed factual matrix of the case wherein the services of the petitioners were engaged through Employment Exchange on a selection process and was given artificial breaks to deny them their due, we feel, none of the above cited judgments of the Apex Court would come to the rescue of the case of the respondent-Management and therefore, the propositions laid down by the Apex Court in the above judgments, cannot be applied to the facts of the case on hand.

28. At this juncture, it is to be pointed out that because of the attitude of the respondent-Management in giving artificial breaks to the workmen, who have been appointed through Employment Exchange, they are losing their seniority in the Employment Exchange and thus, if they want to re-register their names with the Employment Exchange they must forego their former seniority and thus, their getting any chance of attending any interview through Employment Exchange is bleak and by the time, they get a chance of attending an interview, they may be over-aged also. It is also to be pointed out that all the petitioners are either late 30's or early 40's and therefore, their chance of getting alternate jobs, through employment exchanges is also very remote.

29. When the work is permanent and perennial in nature, as has been observed supra, the respondent-Management, an instrumentality of the State, ought not to have resorted to retrench the people for every 90 days and appoint fresh hands or appoint the same hands after a considerable break, that too at the cost of their seniority in the Employment Exchanges. This practice adopted on the part of the respondent-Management, a public sector undertaking, is highly condemnable and

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unquestionably amounts to unfair labour practice.

30. In AIR INDIA STATUTORY CORPORATION vs. UNITED LABOUR UNION [(1997) 9 SCC 377], under similar circumstances, a Three Judge Bench of the Apex Court has observed as follows:

> ".... After recent liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution. The word control, therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives".

> 26. From the above discussion, the following principles would emerge:
>
> (1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.
> (2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.
> (3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2) , it is an instrumentality or agency of the State.
> (4) The State is a service corporation. It acts through its instrumentalities, agencies or persons natural or

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juridical.
(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.
(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law, principles and limitations.
(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.
(8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.
(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, Memorandum of Association or bye-laws or Articles of Association.
(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.
(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though

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in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

27. It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions should satisfy the basic law requirements of Article 14. The public law interpretation is the basic tool of interpretation in that behalf relegating common law principles to purely private law field."

31. Thus, as has been held by the Apex Court in the above judgment, there are constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles on the respondent-Management, a public sector undertaking, and it share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution and not to resort to such illegal unfair labour practices, as has been clearly established in this case.

32. In BAJAJ AUTO LTD. vs. BHOJANE GOPINATH D. [(2004) 9 SCC 488], the Apex Court has rejected to interfere with the findings of the Industrial Court, confirmed by the High Court, holding that the practice of employing workmen each year for seven months and discontinuing their services by following rotational system of appointing different sets of workmen by rotation displacing the workmen appointed earlier as 'unfair labour practice'. Since in the case on hand also, admittedly, the respondent-Management is employing the persons batch after batch and discontinuing their services by following rotational system, it would squarely fall within the definition of 'unfair labour practice' as has been held by the Apex Court in the above judgment.

33. In GUJARAT AGRICULTURAL UNIVERSITY vs. RATHOD LABHU BECHAR [(2001) 3 SCC 574], considering the case of daily rated labourers engaged dehors the rules as plumbers, carpenters, sweepers, pump operators, helpers and masons by a fully State-aided University and continued as such for long period of 10 years or so without considering their regularisation, the Apex Court has held:

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"Where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption.... It is true, creation of posts does involve financial implication. Hence financial health of a particular institution plays an important role which courts also keep in mind. The court does exercise its restraint where fact are such where extent of creation of posts create financial disability. But this does not give largess to an institution to engage larger number of daily-wage workers for a long number of years without absorbing them or creating posts, which constitutes an unfair labour practice."

It is also held in the above judgment as follows:

"Where very large number of workers are required to be absorbed, the Supreme Court has accepted the formula in the past to absorb such employees under a scheme in a phased manner. This is done to work it out within its financial means. Every liberty and entitlement is always subject to such financial limits. But in considering such absorption, the financial means have to be stretched to the maximum but should not be a defence with motive to dis-entitle the claim of the workmen. However, clause 1(d) is silent as to what number of posts the Government is creating initially for the first phase of absorption. Therefore, it is necessary to emphasise that in creating the posts, the Government should see that maximum posts are created to absorb maximum of such workers who have completed ten years as on 31.12.2000, as these workers have more than eligible claim. Thereafter, even reassessment for additional posts, about which we are referring should be done in the same perspective. One can hope and trust, the Government who is the guardian of the people and is obliged under Article 38 of the Constitution, to secure a social order for the promotion of welfare of the people, to eliminate inequalities in status, will

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endeavour to give maximum posts even at the first stage of absorption, and do the same in the same spirit for creating additional posts after an inquiry to find what further number of additional posts are required for regularising such other daily-rated workers, and after assessing it, to create such additional posts for their absorption."

34. As in the above case, in the case on hand also, the petitioners have sought a direction to the respondent-Management to frame a Scheme. As has been held by the Apex Court in the above judgment, since such formula was accepted by the Apex Court, to absorb such employees under a Scheme in a phased manner, we feel it appropriate, following the above judgment of the Apex Court, to allow the prayer of the petitioners, by directing the respondent-Management to frame a Scheme.

35. Unfortunately, the learned single Judge has failed to assess the case in its proper perspective and has landed in an erroneous conclusion of dismissing the writ petitions filed by the petitioners and hence, the said decision of the learned single Judge, needs to be set aside.

For all the above discussions, all the writ appeals and the writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. The respondent-Management is directed to frame a Scheme, as has been prayed for in the writ petitions and the writ appeals, within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1.The Chairman & Managing Director,
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2.Regional Manager,
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Anna International Airport,
Meenambakkam,
Madras-600027.

4.District Employment Officer,
Employment Exchange,
Kancheepuram.

5. The Deputy Manager Airport
Air India Limited
Anna International Airport
Meenambakkam, Chennai-27.

6. Air India Air Transport Service Ltd.,
AVC Building
Pallavaram
Chennai-43.

17 ccs to Mr. S. Gunaseelan, Advocate, sr. 41637 to 41372 and 41620 to 41630

4 ccs to Mr.P.V. Ramachandran, Advocate, sr. 41355, 41440 to 41442
1 cc to M/s. Aiyar and Dolia, Advocate, sr. 41430
1 cc to Mr.P. Chandrasekaran, Advocate, Sr. 41449
1 cc to mr.R. Karthikeyan, Advocate, sR. 41428
4 ccs to Mr.T. Ramkumar, Advocate, Sr. 42249, 41450, 41448

W.A. Nos.399 to 421/2001 etc.

MRD (CO)
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